



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2019-0822]

RIN 1625-AA01

Anchorage Grounds; Atlantic Ocean, Delaware

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the anchorage regulations for the Delaware Bay and River, and adjacent waters, by establishing two offshore deep-water anchorages. The purpose of this rule is to improve navigation safety by accommodating recent and anticipated future growth in vessel size and the volume of vessel traffic entering the Delaware Bay and River, and to preserve areas traditionally used or needed for anchoring.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0822 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Elizabeth Marshall, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271-4851, email Elizabeth.J.Marshall@uscg.mil; or Mr. Matt

Creelman, Fifth Coast Guard District (dpw), U.S. Coast Guard; telephone (757) 398–6230, email Matthew.K.Creelman2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ACPARS	Atlantic Coast Port Access Route Study
AIS	Automatic Identification System
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NOI	Notice of Intent
NPRM	Notice of Proposed Rulemaking
PARS	Port Access Route Study
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

In 2011, the Coast Guard received requests to formally establish anchorages in the Atlantic Ocean offshore from the Delaware coast in response to the Atlantic Coast Port Access Route Study (ACPARS). The ACPARS is available at <https://navcen.uscg.gov/?pageName=PARSReports>. The Federal Pilots and the Mariners' Advisory Committee for the Bay and River Delaware requested formal anchorage grounds be established to the east and the west of the Southeastern Approach traffic separation scheme in order to preserve areas traditionally used for anchoring from offshore development. The Coast Guard held meetings on July 12, 2018, and August 21, 2018, with maritime stakeholders and waterway users to discuss the impacts to vessel traffic and navigation safety on the Delaware Bay and River due to the expansion of the Panama Canal and the planned deepening of the Delaware River from 40 to 45 feet. The attendees determined that the increased volume of vessel traffic and the size of vessels calling on the Delaware Bay and River, combined with planned and potential offshore development, heightened the need to formally establish new anchorage grounds.

On November 29, 2019, the Coast Guard published a Notice of Inquiry (NOI) in the **Federal Register** (81 FR 25854). There, we stated why we issued the NOI and invited comments on our inquiry into the establishment of two anchorages offshore Delaware Bay and one inshore, at the breakwater of Cape Henlopen. We received 42 comments.

After considering all comments on the NOI, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (87 FR 16126) on March 22, 2022. There, we stated why we issued the NPRM and why we decided to move forward with only two of the proposed anchorages: Anchorage C—Cape Henlopen and Anchorage D—Indian River. We invited comments on the proposed rulemaking. We received one comment.

III. Legal Authority and Need for Rule

The legal basis and authorities for this rule are found in 46 U.S.C.70006 and 33 CFR 1.05-1, DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage grounds.

The purpose of this rule is to improve navigation safety by accommodating recent and anticipated future growth in cargo vessel size and volume of vessel traffic entering the Delaware Bay and River, and to preserve areas traditionally used or needed for anchoring.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published March 22, 2022. That comment had two parts. First, that we consider revising the regulatory language used to describe the anchorage coordinates in order to aid cartography and comprehension. Second, that we consider the impact of a sunken wreck located within the area of Anchorage D—Indian River on anchoring vessels. In this section, we discuss how we responded to each part of this comment and the Final Rule.

A. Regulatory Language

Regarding the language used in the Rule, the comment recommended revising paragraphs (a)(19) and (a)(20) by removing text reading, “The waters bounded by a line connecting the following points;” and replacing it with, “All waters bound by the following points:.” The Coast Guard agrees with this recommendation with the intent to assist cartography. The revision has been implemented into the regulatory text at the end of this rulemaking. All other regulatory text remaining unchanged.

B. Wreckage in Anchorage D—Indian River

The comment identifies a sunken wreck located at 74° 50'32.463"W, 38° 30'31.788"N (WGS 1984), which is located within the boundaries of Anchorage D—Indian River and requests the Coast Guard determine the possibility of adverse effects caused by this obstruction in the anchorage ground. The Coast Guard finds that this wreckage is relatively small in nature compared to the overall size of the anchorage area and charted depth of water, which leaves sufficient area within the anchorage for the use of vessels to anchor away from this obstruction. The Coast Guard also believes this is a well-documented and well-charted wreckage, and that a prudent mariner would avoid anchoring over such an object. The Coast Guard finds that overall risk of adverse effects from wreckage to be very low and made no changes to this rule in response.

C. Final rule

This rule formally establishes two new anchorage grounds, Anchorage C—Cape Henlopen and Anchorage D—Indian River. Anchorage C—Cape Henlopen will be located in the Atlantic Ocean approximately 9.4 miles east of the Delaware coast in naturally deep water with charted depths between 41 and 85 feet. Anchorage D—Indian River will be located in the Atlantic Ocean beginning approximately 6 miles east of the Delaware coast in naturally deep water with charted depths between 40 and 85 feet. The specific coordinates for these anchorage grounds are included in the regulatory text at the

end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location and size of the proposed anchorage grounds, as well as the vessel traffic and anchoring data provided by the Coast Guard Navigation Center. The regulation would ensure approximately 27 square miles of anchorage grounds are designated to provide necessary commercial deep draft anchorages and enhance the navigational safety of commercial vessels transiting to, from, and within the Delaware Bay and River. The impacts on routine navigation are expected to be minimal because the proposed anchorage areas are located outside of the established traffic separation zones and are consistent with current anchoring habits of vessels that call on the Delaware River. When not occupied, vessels would be able to maneuver in, around, and through the anchorages.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The number of small entities impacted and the extent of the impact, if any, is expected to be minimal. Anchorage C—Cape Henlopen and Anchorage D—Indian River are located in an area of the Atlantic Ocean, which is not a popular or productive fishing location. Further, the location is not in an area routinely transited by vessels heading to, or returning from, known fishing grounds. Finally, the anchorage is located in an area that is not currently used by small entities, including small vessels, for anchoring due to the depth of water naturally present in the area.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined

that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amending the regulations for Delaware Bay and River anchorage grounds by establishing two new anchorage regulations; Anchorage C—Cape Henlopen and Anchorage D—Indian River. It is categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110--ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 46 U.S.C. 70034; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.157 by adding paragraphs (a)(18), (a)(19) and (a)(20) to read as follows:

§ 110.157 Delaware Bay and River.

(a) * * *

(18) *Reserved.*

(19) ***Anchorage C – Cape Henlopen.*** All waters bound by the following points:

Latitude	Longitude
38°40'54.00"N	74°52'00.00"W
38°40'56.08"N	74°48'51.34"W
38°37'36.00"N	74°48'30.00"W

(DATUM: NAD 83)

(20) ***Anchorage D – Indian River.*** All waters bound by the following points:

Latitude	Longitude
38°34'56.25"N	74°52'19.12"W
38°33'40.91"N	74°54'41.50"W
38°31'31.08"N	74°55'27.96"W
38°29'07.35"N	74°53'29.25"W
38°28'56.87"N	74°50'28.69"W
38°30'07.37"N	74°48'08.38"W

(DATUM: NAD 83)

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Dated: June 29, 2022.

S. N. Gilreath,
Rear Admiral, U.S. Coast Guard,
Commander, Fifth Coast Guard District.

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